



DEPARTMENT OF VETERANS AFFAIRS

8320-01

38 CFR Part 74

RIN 2900-AO49

VA Veteran-Owned Small Business Verification Guidelines

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, without change, the interim final rule published in the Federal Register on June 27, 2012. This document implements a portion of the Veterans Benefits, Health Care, and Information Technology Act of 2006, which requires the Department of Veterans Affairs (VA) to verify ownership and control of veteran-owned small businesses (VOSBs), including service-disabled veteran-owned small businesses (SDVOSBs), in order for these firms to participate in VA acquisitions set asides for SDVOSB/VOSBs. Specifically, this final rule requires re-verification of SDVOSB/VOSB status only every 2 years rather than annually. The purpose of this change is to reduce the administrative burden on SDVOSB/VOSBs regarding participation in VA acquisitions set asides for these types of firms. Verified SDVOSB/VOSBs are placed on the Vendor Information Page (VIP) at www.vetbiz.gov.

DATES: Effective Date: This rule is effective [insert date of publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Michelle Gardner-Ince, Director, Center for Veterans Enterprise (OOVE), Department of Veterans Affairs, 810 Vermont Ave. NW., Washington, DC 20420, phone (202) 303-3260 x5237. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On June 27, 2012, VA published in the Federal Register (77 FR 38181) an interim final rule that revised the requirement for re-verification of SDVOSB/VOSB status from 1 year to 2 years. As noted in the preamble to the interim final rule, VA has concluded that an annual examination is not necessary to adequately maintain the integrity of the Verification Program.

We provided a 60-day comment period that ended on August 27, 2012. We received six comments. Four commenters discussed that the words “open market” should be removed from the sentence “In accordance with 38 U.S.C. 8127 and VA Acquisition Regulation, 48 CFR Part 819, VA is required to set aside any open market procurement for SDVOSBs and then VOSBs, first and second respectively, if two or more such concerns are reasonably anticipated to submit offers at fair and reasonable pricing.” This sentence was part of the background information contained in the preamble and not a part of the regulatory language. VA’s interpretation with respect to the traditional relationship between set-asides conducted in open-market acquisitions and the Federal Supply Schedule (FSS), namely that agencies are not required to implement set-aside programs before or while using the FSS, has been upheld in Kingdomware Technologies, Inc. v. United States, 107 Fed. Cl. 226 (2012). In any event, the regulatory language only addressed the expansion of the SDVOSB/VOSB re-

verification status requirement from 1 year to 2 years and, therefore, these comments are outside the scope of this rulemaking. We make no changes based on these comments. Two additional commenters endorsed the proposed change. VA appreciates the commenters' support.

Based on the rationale set forth in the interim final rule and for the reasons discussed above, we adopt the interim final rule as a final rule without change.

Administrative Procedure Act

This document affirms as final the interim final rule that is already in effect. In accordance with 5 U.S.C. 553(b)(B) and (d)(3), the Secretary of Veterans Affairs concluded that there was good cause to dispense with advance public notice and opportunity to comment on this rule and good cause to publish this rule with an immediate effective date. The rule makes only a minor modification to extend the eligibility period for SDVOSB/VOSBs after VA's initial robust verification examination and approval from 1 year to 2 years. The rule reduces the administrative burden on SDVOSB/VOSB participants by eliminating annual re-verification submissions. The integrity of the program remains protected by the initial robust and detailed verification examination, the regulatory requirement of participants to report changes to ownership and control during their eligibility period, VA's authority to conduct random site examinations and to re-examine eligibility upon receipt of any reasonably credible information affecting SDVOSB/VOSB verified status, and, for individual acquisitions, the status protest process, where VA contracting officers or competing vendors can challenge the SDVOSB/VOSB status of offerors if a reasonable basis can be asserted

to be decided by VA's Office of Small and Disadvantaged Business Utilization on SDVOSB/VOSB set-aside acquisitions. In view of the detrimental effects of continuing an unnecessary administrative burden on program participants and verifying officials, and to avoid delays in verification caused by repetitive annual reviews, the Secretary concluded that it was impracticable, unnecessary, and contrary to public interest to delay the effective date of this rulemaking.

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601-612, applies to this final rule. This final rule is generally neutral in its effect on small businesses because it relates only to small businesses applying for verified status in VA's SDVOSB/VOSB verified database. The overall impact of the rule will benefit small businesses owned by veterans or service-disabled veterans because it will reduce their administrative burden associated with maintaining verified status by extending the need for re-verification by VA from 1 year to 2 years. VA has estimated the cost to an individual business to be less than \$100.00 for 70-75 percent of the businesses seeking verification, and the average cost to the entire population of businesses seeking to become verified is less than \$325.00 on average. Increasing the verification period will decrease the frequency of any such costs. On this basis, the Secretary certifies that the adoption of this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. Therefore, under 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a “significant regulatory action” requiring review by the Office of Management and Budget (OMB), unless OMB waives such review, as “any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.”

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined, and it has been determined not to be a significant regulatory action under Executive Order 12866. VA's impact analysis can be

found as a supporting document at <http://www.regulations.gov>, usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's Web site at <http://www1.va.gov/orpm/>, by following the link for "VA Regulations Published."

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

This final rule contains no new provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521).

Catalog of Federal Domestic Assistance

This final rule affects the verification guidelines of veteran-owned small businesses, for which there is no Catalog of Federal Domestic Assistance program number.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Jose D. Riojas, Chief of Staff, Department of Veterans Affairs approved this document on July 7, 2013, for publication.

List of Subjects in 38 CFR Part 74

Administrative practice and procedures, Privacy, Reporting and recordkeeping requirements, Small business, Veteran, Veteran-owned small business, Verification.

Dated: August 19, 2013

Robert C. McFetridge,
Director, Regulation Policy and Management,
Office of the General Counsel,
Department of Veterans Affairs.

Accordingly, the interim final rule amending 38 CFR part 74, which was published on June 27, 2012, at 77 FR 38181, is adopted without change.

[FR Doc. 2013-20488 Filed 08/21/2013 at 8:45 am; Publication Date: 08/22/2013]